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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOHN GARRETT SMITH,

9 Petitioner,

10 v.

11 RONALD HAYNES,

12 Respondent.

CASE NO. C17-6019 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 93), and
15 Petitioner John Garrett Smith’s (“Smith”) objections to the R&R (Dkts. 97–101).

16 On June 6, 2018, Judge Christel issued the R&R recommending that the Court
17 dismiss Smith’s petition without prejudice because the claims are unexhausted and a state
18 court remedy remains available. Dkt. 93. On June 13, 2018, Smith filed four documents
19 objecting to the R&R. Dkts. 97–100. On June 18, 2018, Smith filed another objection to
20 the R&R. Dkt. 101.

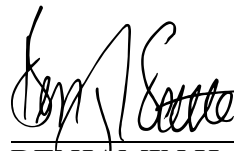
21 The district judge must determine de novo any part of the magistrate judge’s
22 disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Smith raises numerous objections, but none of them attack the merits
4 of Judge Christel's R&R. Although Smith asserts numerous alleged errors in his trial, he
5 fails to show that any of these errors were presented to any state court. Judge Christel
6 thoroughly explained that, because Smith is seeking relief from a state court conviction,
7 Smith must present these claims to a state court before seeking relief from this federal
8 court. Absent any evidence that Smith presented his claims to a state court, the Court
9 agrees with Judge Christel that Smith has failed to exhaust his claims. Therefore, the
10 Court having considered the R&R, Smith's objections, and the remaining record, does
11 hereby find and order as follows:

- 12 (1) The R&R is **ADOPTED**;
- 13 (2) Smith's petition is **DISMISSED without prejudice**;
- 14 (3) A Certificate of Appealability is **DENIED**; and
- 15 (4) The Clerk shall enter a **JUDGMENT** and close the case.

16 Dated this 5th day of July, 2018.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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